No. 1401

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

CITY OF WILLIAMSPORT, ET AL., *Appellants*

v.

UNITED STATES OF AMERICA, ET AL., *Appellees.*

On Appeal From the United States District Court for the Middle District of Pennsylvania

REPLY TO MOTIONS TO AFFIRM

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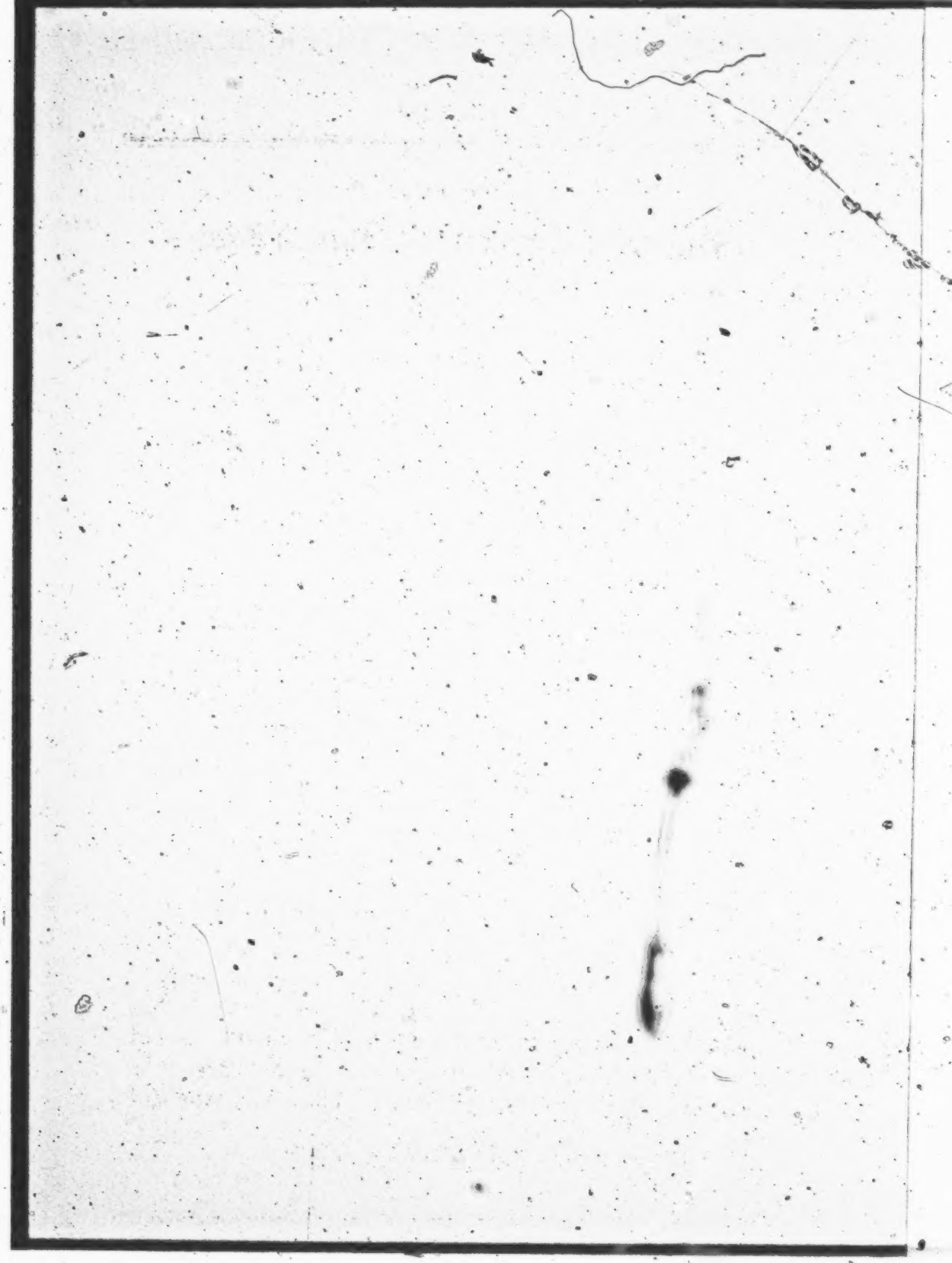

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REPLY TO MOTIONS TO AFFIRM

Appellants submit this reply to the motions to affirm filed by the United States and by Penn Central Company.

1. The decision below, sustaining the refusal of the agency to render statutory findings on the entire run of a passenger train or to even consider the impact from the discontinuance of a portion of a train's run upon the viability of the remaining segment, is not validated by reference to four prior agency decisions removing trains in this manner.[1] The issue was not

[1] U.S. Motion, p. 3, fn. 2; PC Motion, p. 7, fn. 3.

actively contested in those cases, and the discontinued segment received very little patronage.[2] In each case, the train was subsequently further segmented or discontinued completely, illustrating the futility of this administrative practice from the standpoint of the public.[3] Indeed, the very Buffalo-Baltimore night trains relied upon by the majority of the Commission's Division 3 to serve these Pennsylvania communities (J.S., p. 26a), were recently segmented with the Harrisburg-Baltimore portion now discontinued.

2. The statute directs the Interstate Commerce Commission to institute an investigation into the proposed discontinuance specified by the carrier's notice, without the "in whole or in part" proviso which Penn Central would infer,[4] and requires quasi-jurisdictional findings concerning such notice before the investigation may be discontinued.

3. The regulatory problems in train discontinuance cases basically stem from the technique of the "partial" discontinuance, a device whereby the Interstate Commerce Commission closes its eyes to the entire run of a train, even if profitable, as here.[5] The importance

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[2] In constrast, of the 43 protestant witnesses in the agency proceeding below, 42 desired continuance of the Buffalo-Harrisburg segment, whereas only 1 preferred the Harrisburg-Baltimore service; Passenger utilization for the discontinued northern segment is twice that for the continued southern segment.

[3] See: *Louisville & N.R. Co. Discontinuance of Trains*, 320 I.C.C. 669 (1964); *Chicago, M. St. P. & P.R. Co. Discontinuance of Service*, 320 I.C.C. 566 (1964); The NYC and B&M trains were made subject to State action.

[4] PC Motion, p. 5.

[5] Appellants do not concede that the northern segment, standing alone, operated at a loss as suggested by the United States in its Motion, p. 4. See dissent of Commissioner Virginia Mae Brown (J.S., p. 32a).

of this case, involving the first appeal to reach this court since enactment of the statute, is further indicated by the fact that the agency has twice relied upon the opinion below in segmenting trains in the short period since March 4, 1968.[6]

The Motions to Affirm should be denied, and the appeal given plenary consideration on the merits.

Respectfully submitted,

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[6] See: *Chicago, B. & Q. R. Co. Discontinuance of Trains*, 331 I.C.C. 813, 827 (4/2/68); *Illinois Central R. Co. Discontinuance of Trains*, 333 I.C.C. 149, 174 (5/14/68).

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